

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DONALD R. YOUNG and
SANDRA KAY YOUNG,

Plaintiffs,

v.

CIVIL ACTION NO. 2:02-0070

EMPLOYER-TEAMSTERS LOCAL NOS.
175-505 PENSION TRUST FUND, et al.,


Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is the plaintiff's renewal of their Motion for Attorney Fees and Expenses of Suit filed on March 12, 2003, plus a current application for attorney's fees in this case [Docket 91]. As the court noted in the Order dated March 3, 2004, an award of attorney's fees is inappropriate when a case is remanded and the parties are still litigating the merits of the action. This case was remanded for the second time on May 27, 2005, and is currently being litigated before the plan administrator. Accordingly, the court incorporates the reasoning of the March 3, 2004 Order, again **FINDS** that the plaintiffs do not qualify as a prevailing party, and **DENIES** the motion [Docket 91].

The court **DIRECTS** the Clerk to send a copy of this written opinion and Order to counsel of record and any unrepresented party.

ENTER: August 18, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE